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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 KOHEN DIALLO UHURU,

12 Plaintiff,

13 v.

14 J. BENAVIDEZ, et al.,

15 Defendants.  
16

No. 2:22-CV-0784-TLN-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's renewed motion for the appointment of  
19 counsel, ECF No. 39.

20 The United States Supreme Court has ruled that district courts lack authority to  
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.  
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the  
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935  
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).  
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success  
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the  
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is  
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
4 articulate his claim. The facts he alleged and the issues he raised were not  
5 of substantial complexity. The compelling evidence against Terrell made it  
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In his motion, Plaintiff argues that the appointment of counsel is warranted  
9 because he is indigent and unable to afford counsel, he has a severe mental illness, and a trial will  
10 involve “confusing concepts and erroneous testimony.” ECF No. 39. As to Plaintiff’s claim of  
11 severe mental illness, Plaintiff has not submitted any documentation to support the existence of a  
12 mental illness or limitations associated with such an illness. A review of Plaintiff’s filings to date  
13 indicates that, despite a claimed mental illness, he is able to articulate himself reasonably well.  
14 Further, at this stage of the proceedings before an answer has been filed, the Court cannot say that  
15 Plaintiff has established any particular likelihood of success on the merits of his claims. Nor can  
16 the Court say that the trial of this matter will involve particularly complex issues or “erroneous  
17 testimony.”

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s renewed motion for the  
19 appointment of counsel, ECF No. 39, is DENIED.

20 Dated: November 6, 2023



21 DENNIS M. COTA  
22 UNITED STATES MAGISTRATE JUDGE  
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